

REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed December 14, 2007. Through this response, claims 72-84 have been canceled without prejudice, waiver, or disclaimer, and claims 85-106 have been added. Applicants respectfully submit that claims 85-106 are drawn to subject matter corresponding to elected Group I. Reconsideration and allowance of the application and pending claims 85-106 are respectfully requested.

I. Claim Rejections - 35 U.S.C. § 112, Second Paragraph

Claims 72-84 have been rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. In particular, the Examiner has requested clarity in use of the claim terminology "entitlement unit number." Applicants respectfully submit that the rejection to claims 72-84 under 35 U.S.C. § 112, second paragraph has been rendered moot by cancellation of claims 72-84. Further, Applicants respectfully submit that new claims 85-106 are expressed in a manner that both provides sufficient clarity to entitlement unit number and finds support in the specification (e.g., paragraph [0003]). Accordingly, Applicants respectfully request that the rejection be withdrawn.

II. Claim Rejections - 35 U.S.C. § 103(a)

A. Statement of the Rejection

Claims 72, 74-76, 79 and 81 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *George et al.* ("George," U.S. Pat. No. 4,599,647) in view of Applicants' alleged admittance of prior art, herein referred to as *AAPA*, in further view of *Crowther et al.* ("Crowther," U.S. Pat. No. 4,937,866) as evidenced by *Wasilewski* ("Wasilewski," U.S. Pat. No. 5,420,866) and further in view of *Urakoshi et al.* ("Urakoshi,"

U.S. Pat. No. 6,067,564). Claims 73, 77-78, 80, 83 and 84 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *George* in view of *AAPA*, in further view of *Crowther* as evidenced by *Wasilewski* and further in view of *Urakoshi* and further in view of *Wasilewski*. Applicants respectfully submit that the rejections to the claims have been rendered moot, and further submit that claims 85-106 are allowable over the art of record.

B. Discussion of the Rejection

The M.P.E.P. § 2100-116 states:

Office policy is to follow *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), in the consideration and determination of obviousness under 35 U.S.C. 103. . . the four factual inquiries enunciated therein as a background for determining obviousness are as follows:

- (A) Determining the scope and contents of the prior art;
- (B) Ascertaining the differences between the prior art and the claims in issue;
- (C) Resolving the level of ordinary skill in the pertinent art; and
- (D) Evaluating evidence of secondary considerations.

In the present case, it is respectfully submitted that a *prima facie* case for obviousness is not established using the art of record.

Independent Claim 85 and Dependent Claims 86-94

Claim 85 recites (with emphasis added):

85. A method, comprising:
- receiving an entitlement unit table (EUT), the EUT comprising an identifier of a first service and one or more entitlement unit numbers (EUNs) that each uniquely identify a service package that comprises one or more services available to the user, the one or more services for each of the one or more EUNs including the first service;
 - responsive to user selection of the first service from an electronic program guide (EPG), determining whether at least one of the one or more EUNs matches an authorized EUN; and
 - responsive to determining that there is a match between the one or more EUNs and the authorized EUN, tuning to the selected first service.***

Applicants respectfully submit that the art of record does not disclose, teach, or suggest at least the above-emphasized features. For instance, with regard to *George*, the Office Action relies on tier data and authorized tier numbers found in *George* at column 7, lines 42-44 and 55-67, reproduced below as follows (emphasis added):

[42-44] The broadcasted signals contain a plurality of levels of programming called tiers.

[55-67] The subscriber makes a choice of which programming tiers to pay for by subscription. All other tiers are paid for on an "as viewed" basis. The programming originator may choose to block entirely the viewing of any tier by a particular subscriber. To do this, two tier tables are provided to the decoder. One table is the "subscription" list. The other is the "blocking" list.

If any program tier matches a tier in the subscription list, the program may be immediately viewed. If not, the display indicates that the program on the selected tier must be paid for and the subscriber may proceed to preview and pay for the program, if desired. If the program is on a tier which appears on the "blocking" list, it cannot be viewed.

Even assuming *arguendo* tiers are equivalent to **EUNs**, which is neither an expressed or implied admission, *George* does not disclose, teach, or suggest the above-emphasized features. For instance, the section of *George* underlined above is devoid of the particular mechanisms as claimed, such as authorized viewing with respect to user selection and relative timing of matching, user selection, and tuning. For instance, is the program tier matching alleged to be performed in *George* after user selection or before user selection? Similarly, *AAPA*, *Crowther* (e.g., single mention of tier in cols. 1-2, lines 66-4: "As a result of this if a transmission is operating in the subscription mode and a subscriber is not authorised to receive the programme of that transmission as it may not be in a class (tier) of programmes he has not requested there is no way in which he can receive that programme in an intelligible manner."), *Wasilewski* (e.g., single mention of tier in col. 4, lines 55-59: "For example, it is often desirable to transmit authorization information to various decoders or groups of decoders for controlling access to different programs or tiers of programs in a given Transport Stream."), and *Urakoshi* (no mention

of tiers) collectively fail to remedy the deficiency of information pertaining to the mechanics as claimed. Accordingly, Applicants respectfully submit that claim 85 is allowable over the art of record, and respectfully request that the rejection be withdrawn.

For at least the reason that independent claim 85 is allowable over the cited references of record, dependent claims 86-94 are allowable as a matter of law for at least the reason that dependent claims 86-94 contain all the features of independent claim 85. See *Minnesota Mining and Manufacturing Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002) *Jeneric/Pentron, Inc. v. Dillon Co.*, 205 F.3d 1377, 54 U.S.P.Q.2d 1086 (Fed. Cir. 2000); *Wahpeton Canvas Co. v. Frontier Inc.*, 870 F.2d 1546, 10 U.S.P.Q.2d 1201 (Fed. Cir. 1989).

Independent Claim 95 and Dependent Claims 96-105

Claim 95 recites (with emphasis added):

95. An apparatus, comprising:
a tuner; and
a processor configured to control the tuner, the processor further configured to:
receive an entitlement unit table (EUT), the EUT comprising an identifier of a first service and one or more entitlement unit numbers (EUNs) that each uniquely identify a service package that comprises one or more services available to the user, the one or more services for each of the one or more EUNs including the first service;
responsive to user selection of the first service, determine whether at least one of the one or more EUNs matches an authorized EUN; and
responsive to determining that there is a match between the one or more EUNs and the authorized EUN, configure the tuner to tune to the selected first service.

Applicants respectfully submit that the art of record does not disclose, teach, or suggest at least the above-emphasized features. For instance, with regard to *George*, the Office Action relies on tier data and authorized tier numbers found in *George* at column 7, lines 42-44 and 55-67, reproduced below as follows (emphasis added):

[42-44] The broadcasted signals contain a plurality of levels of programming called tiers.

[55-67] The subscriber makes a choice of which programming tiers to pay for by subscription. All other tiers are paid for on an "as viewed" basis. The programming originator may choose to block entirely the viewing of any tier by a particular subscriber. To do this, two tier tables are provided to the decoder. One table is the "subscription" list. The other is the "blocking" list.

If any program tier matches a tier in the subscription list, the program may be immediately viewed. If not, the display indicates that the program on the selected tier must be paid for and the subscriber may proceed to preview and pay for the program, if desired. If the program is on a tier which appears on the "blocking" list, it cannot be viewed.

Even assuming *arguendo* tiers are equivalent to EUNs, *George* does not disclose, teach, or suggest the above-emphasized features. For instance, the section of *George* underlined above is devoid of the particular mechanisms as claimed, such as authorized viewing with respect to user selection and relative timing of matching, user selection, and tuning. For instance, is the program tier matching performed after user selection or before user selection? Similarly, *AAPA*, *Crowther* (e.g., single mention of tier in cols. 1-2, lines 66-4: "As a result of this if a transmission is operating in the subscription mode and a subscriber is not authorised to receive the programme of that transmission as it may not be in a class (tier) of programmes he has not requested there is no way in which he can receive that programme in an intelligible manner."), *Wasilewski* (e.g., single mention of tier in col. 4, lines 55-59: "For example, it is often desirable to transmit authorization information to various decoders or groups of decoders for controlling access to different programs or tiers of programs in a given Transport Stream."), and *Urakoshi* (no mention of tiers) collectively fail to remedy the deficiency of information pertaining to the mechanics as claimed. Accordingly, Applicants respectfully submit that claim 95 is allowable over the art of record, and respectfully request that the rejection be withdrawn.

For at least the reason that independent claim 95 is allowable over the cited references of record, dependent claims 96-105 are allowable as a matter of law.

Independent Claim 106

Claim 106 recites (with emphasis added):

106. A method, comprising:
receiving an entitlement unit table (EUT), the EUT comprising an identifier of a first service and one or more entitlement unit numbers (EUNs) that each uniquely identify a service package that comprises one or more services available to the user, the one or more services for each of the one or more EUNs including the first service;
responsive to user selection of the first service from an electronic program guide (EPG), determining whether at least one of the one or more EUNs matches an authorized EUN;
responsive to determining that there is a match between the one or more EUNs and the authorized EUN, tuning to the selected first service; and
responsive to the tuning, determining whether the selected first service is an authorized service, wherein determining whether the selected first service is an authorized service comprises:
receiving an encrypted entitlement control message (ECM);
decrypting the encrypted ECM to reveal encrypted control words and the one or more EUNs, the encrypted control words corresponding to elementary streams of the selected first service and the one or more EUNs; and
determining whether at least one of the one or more EUNs matches an authorized EUN; and
decrypting the encrypted control words responsive to determining that there is a match between the one or more EUNs and the authorized EUN.

Applicants respectfully submit that the art of record does not disclose, teach, or suggest at least the above-emphasized features. For instance, with regard to *George*, the Office Action relies on tier data and authorized tier numbers found in *George* at column 7, lines 42-44 and 55-67, reproduced below as follows (emphasis added):

[42-44] The broadcasted signals contain a plurality of levels of programming called tiers.

[55-67] The subscriber makes a choice of which programming tiers to pay for by subscription. All other tiers are paid for on an "as viewed" basis. The programming originator may choose to block entirely the viewing of any tier by a particular subscriber. To do this, two tier tables are provided

to the decoder. One table is the "subscription" list. The other is the "blocking" list.

If any program tier matches a tier in the subscription list, the program may be immediately viewed. If not, the display indicates that the program on the selected tier must be paid for and the subscriber may proceed to preview and pay for the program, if desired. If the program is on a tier which appears on the "blocking" list, it cannot be viewed.

Even assuming *arguendo* tiers are equivalent to EUNs, *George* does not disclose, teach, or suggest the above-emphasized features. For instance, the section of *George* underlined above is devoid of the particular mechanisms as claimed, such as authorized viewing with respect to user selection and relative timing of matching, user selection, and tuning. For instance, is the program tier matching performed after user selection or before user selection? Similarly, *AAPA*, *Crowther* (e.g., single mention of tier in cols. 1-2, lines 66-4: "As a result of this if a transmission is operating in the subscription mode and a subscriber is not authorised to receive the programme of that transmission as it may not be in a class (tier) of programmes he has not requested there is no way in which he can receive that programme in an intelligible manner."), *Wasilewski* (e.g., single mention of tier in col. 4, lines 55-59: "For example, it is often desirable to transmit authorization information to various decoders or groups of decoders for controlling access to different programs or tiers of programs in a given Transport Stream."), and *Urakoshi* (no mention of tiers) collectively fail to remedy the deficiency of information pertaining to the mechanics as claimed. Accordingly, Applicants respectfully submit that claim 106 is allowable over the art of record, and respectfully request that the rejection be withdrawn.

In addition, the art of record fails to disclose, teach, or suggest the two-stage approach (pre-tune, post-tune) to authorization as claimed, and fails to disclose, teach, or suggest ***decrypting the encrypted ECM to reveal encrypted control words and the one or more EUNs, the encrypted control words corresponding to elementary***

streams of the selected first service and the one or more EUNs. Accordingly, Applicants respectfully submit that claim 106 is allowable over the art of record for these additional reasons, and respectfully request that the rejection be withdrawn.

In summary, it is Applicants' position that a *prima facie* for obviousness has not been made against Applicants' claims. Therefore, it is respectfully submitted that each of these claims is patentable over the art of record and that the rejection of these claims should be withdrawn.

III. Canceled Claims

As identified above, claims 72-84 have been canceled from the application through this response without prejudice, waiver, or disclaimer. Applicants reserve the right to present these canceled claims, or variants thereof, in continuing applications to be filed subsequently.

IV. New Claims

As identified above, claims 85-106 have been added into the application through this response. Applicants respectfully submit that these new claims describe embodiments of an invention novel and unobvious in view of the art of record and, therefore, respectfully request that these claims be held to be allowable.

CONCLUSION

Applicants respectfully submit that Applicants' pending claims are in condition for allowance. Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, and similarly interpreted statements, should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

/dr/

David Rodack
Registration No. 47,034

**THOMAS, KAYDEN,
HORSTEMEYER & RISLEY, L.L.P.**
Suite 1500
600 Galleria Parkway N.W.
Atlanta, Georgia 30339
(770) 933-9500